

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 12-012-15-1-1-00890-16
Petitioner: Phyllis J. (Riggle) Hoovler
Respondent: Clinton County Assessor
Parcel No.: 12-06-05-300-004.000-012
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Phyllis Hoovler filed a Form 130 with the Clinton County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination lowering the value of the property as follows:

Year	Land	Improvements	Total
2015	\$ 40,300	\$ 27,700	\$ 68,000

2. Hoovler filed a Form 131 petition with the Board, electing to have her appeal heard under the Board’s small claims procedures. The Assessor did not ask to remove the matter from small claims.
3. On April 10, 2018, our designated Administrative Law Judge, Timothy Schuster, held a hearing in Indianapolis. Neither he nor the Board inspected the property.
4. Hoovler testified under oath, as did, Dana Myers, the Clinton County Assessor, and James (Jay) Morris, from Ad Valorem Solutions, LLC.
5. The subject property is a mixed agricultural-residential property. It has a single-family home on seven acres located at 6101 North County Road 300 West.

Record

6. The following exhibits were submitted¹:

<u>Packet 1:</u>	Statement regarding conduct and ethics,
Petitioner's Exhibit A1:	Stipulation agreement from 12-7-16 Board hearing,
Petitioner's Exhibit A2:	AdValorem contract cover letter with Clinton County,
Petitioner's Exhibit A3:	AdValorem client list,
Petitioner's Exhibit A4:	AdValorem reference letter,
Petitioner's Exhibit A5:	Indiana Department of Local Government Finance ("DLGF") conduct expectations page 2,
Petitioner's Exhibit A6:	Myers letter to Hoovler dated 7-5-17,
Petitioner's Exhibit A7:	Proposed stipulation agreement for 2015,
Petitioner's Exhibit A8:	Email dated 11-16-17 from Jay Morris to Hoovler,
Petitioner's Exhibit A9:	Email dated 1-22-18 from Hoovler to Beth Hammer,
Petitioner's Exhibit A10:	Continuation of Hoovler-Hammer email,
Petitioner's Exhibit A11:	Letter dated 1-26-18 from Chairman Holaday to Hoovler.
<u>Packet 2:</u>	Summary of Hoovler's argument,
Petitioner's Exhibit 1:	Beacon Schneider aerial view of subject property,
Petitioner's Exhibit 2:	Owen township plat map,
Petitioner's Exhibit 3:	Summary of assessor's revisions to soil type 2012-16,
Petitioner's Exhibit 4:	Letter dated 7-12-13 from Myers to Hoovler,
Petitioner's Exhibit 5:	Myer's map dated 7-11-13,
Petitioner's Exhibit 6:	Beacon Schneider soil type acreages,
Petitioner's Exhibit 6A-I:	Beacon Schneider aerial maps with measured soil types,
Petitioner's Exhibit 7:	DLGF procedure for appeal of assessment,
Petitioner's Exhibit 8:	2015 Form 11,
Petitioner's Exhibit 9, 9A:	Property record card ("PRC") printed 9-15-15,
Petitioner's Exhibit 10, 10A:	2015 agriculture calculations,
Petitioner's Exhibit 11:	2015 Form 130-Short,
Petitioner's Exhibit 12, 12A:	2015 Form 134,

¹ Hoovler submitted two packets of exhibits, each with its own numbering system. Each packet also included an unnumbered document similar to a brief.

- Petitioner's Exhibit 13: 2011 Real Property Assessment Guidelines page 105,
 Petitioner's Exhibit 14: 2011 Real Property Assessment Guidelines figure 2-15 Ag PRC,
 Petitioner's Exhibit 15A-G: 2011 Real Property Assessment Guidelines pages 97-104,
 Petitioner's Exhibit 16: Valuation record section for Ag PRC,
 Petitioner's Exhibit 17A-J: Beacon aerial maps for subject property and PRC,
 Petitioner's Exhibit 18A-B: Minutes from 3-11-16 PTABOA hearing,
 Petitioner's Exhibit 19A-C: Comparison chart outlining DLGF guidelines and Assessor's procedures,
 Petitioner's Exhibit 20, 20A: Visual comparison chart,
 Petitioner's Exhibit 21A-B: 2015 Form 115,
 Petitioner's Exhibit 22: 2016 PRC,
 Petitioner's Exhibit 23A-B: 2015 Form 133,
 Petitioner's Exhibit 24: Letter dated 5-2-16 from Hoovler to Clinton County Auditor,
 Petitioner's Exhibit 25, 25A: 2015 Form 131,
 Petitioner's Exhibit 26, 26A: Summary of exhibits.
- Respondent Exhibit R-1: Summary of Assessor's exhibits/testimony,
 Respondent Exhibit R-2: Certified letter dated 7-5-17 from Myers to Hoovler,
 Respondent Exhibit R-3: Proof of mailing for certified letter,
 Respondent Exhibit R-4: 2015 Stipulation agreement (unsigned),
 Respondent Exhibit R-5: Updated 2015 PRC with corrected land allocations.

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) the digital recording of the hearing.

Objections

8. The Assessor made a blanket objection to all of Hoovler's exhibits in packet 1 with the exception of the 2014 proposed stipulation agreement. The exhibits are labeled A1-A13 and are associated with Hoovler's "statement on conduct and ethics." The Assessor failed to state any grounds for her objection. Therefore, we overrule the Assessor's objection and admit the exhibits.
9. The Assessor also made a vague objection to "all information [...] before [20]15-pay-[20]16 cause we're only hearing 15-pay-16. And I object to the part, including the improvements on [2015] because on her IBTR 131, it was just questioning the land." We understand this to be two separate objections. *Myers testimony*.

10. First, the Assessor appears to be objecting to the relevance of “all information before 15-pay-16.” Evidence is relevant if: (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action. We find the information presented meets this low burden and overrule the objection.
11. Second, the Assessor appears to be arguing that we should not hear arguments about the improvements because that issue was not raised on the Form 131. The Assessor failed to state any authority for her objection. Therefore, we overrule both objections and admit Hoovler’s exhibits into evidence.

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his or her property’s assessment is wrong and what the correct assessment should be. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to the rule.
13. First, Ind. Code § 6-1.1-15-17.2 (a) “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.”
14. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The ALJ initially ruled that Hoovler had the burden of proof. But, our determination for the prior year lowered the assessment to \$66,900. *Hoovler (2014) v. Clinton County Assessor* (IBTR decided May 2, 2017). Because this was a successful appeal, any increase in assessment causes the burden to shift. Because the current 2015 assessment is higher at \$68,000, the burden rests with the Assessor.

Contentions

16. Summary of the Respondent's case:

- a. Jay Morris testified on behalf of the Assessor and discussed the procedural history of the 2015 appeal. Morris is a consultant who works with Clinton County to provide assessment services. He is a level III certified assessor-appraiser. In his testimony, Morris discussed events occurring at, or shortly after, the PTABOA hearing for the 2015 appeal. *Morris testimony.*
- b. The Assessor also conceded to the soil type breakdown Hoovler requested. Based on this concession, the Assessor argued the agricultural portion of the land should be assessed at \$13,060, while the home site should be assessed at \$27,500, for a rounded land assessment of \$40,600 and a total assessment of \$68,300. The Assessor did not offer any market based evidence to support the current assessments of the home site or the improvements. *Resp't. Ex. R4-R5; Myer's testimony.*

17. Summary of the Petitioner's case:

- a. Hoovler made various allegations about the conduct of Jay Morris, Dana Myers, and the Board's ALJ from her 2014 appeal as well as other general complaints about the PTABOA. She also presented a bid letter from Jay Morris to the Assessor in which Morris encouraged the Assessor to contact the Board as a reference for his company, Ad Valorem Solutions, LLC. Hoover stated that she believed this created a conflict of interest.² *Hoovler testimony, Pet'r Exs. A1-10.*
- b. Hoovler made the following "specific requests" in which she asked the Board to: (1) correct soil type acreage numbers, (2) correct improvements assessment numbers, (3) direct the assessor to complete requests 1 and 2, and recalculate the assessment, and (4) provide relief in the form of refunds based on the corrections for current and past years as permitted by law. *Hoovler testimony.*
- c. Hoovler also argued that the the Board has a duty to ensure the Assessor provides her a refund. She also asked the Board to investigate, or to order an investigation of, Clinton County's assessment practices and procedures. *Hoovler testimony.*
- d. Hoovler argued the land should be assessed at \$40,563 (with the agricultural portion accounting for \$13,063). Additionally, she requested a value of \$26,300 for the improvements, resulting in a total value of \$66,863. *Pet'r Exs. 13, 14, 15, 15A-G.*

² Prior to this hearing, we had no knowledge of Morris's apparent use of the Board as a business reference. No member of the Board has provided a reference for either Morris, or his company, Ad Valorem Solutions, LLC. Nor does any member have any intent to do so.

Analysis

21. Indiana assesses real property based on its true tax value, which the Indiana Department of Local Government Finance (“DLGF”) has defined as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Parties may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *Id.*; see also I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals). When using comparable sales to show a property’s value, a party must (1) identify the relevant characteristics of the subject property, (2) explain how those characteristics compared to any purportedly comparable properties, and (3) explain how any relevant differences affected the properties’ market value-in-use. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.*
22. The subject property is a mixed agricultural-residential property making the assessment multifaceted. The DLGF promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. I.C. § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 77-78; I.C. § 6-1.1-4- 4.5(e). Assessors then adjust that base rate according to soil productivity factors. They also classify agricultural land into various types. Depending on the classification, assessors may then apply influence factors in predetermined amounts. See 2011 GUIDELINES, Ch. 2 at 85-96, 98-100. Thus, for agricultural land, true tax value is the amount determined by applying the Guidelines.
23. As part of determining true tax value, the Guidelines carve out one-acre per dwelling on agricultural property, which is classified as an agricultural homesite. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 93. The Assessor conceded to Hoovler’s alleged soil type breakdown, detailed below:

Type	Acres
Homesite	1.0
Roadway	0.44
Tillable Farmland (FDA soil type)	1.98
Tillable Farmland (MTB soil type)	0.91
Tillable Farmland (TY soil type)	2.67
Total measured farmland	5.56
Total legal acreage	7.0

These values are identical to those ordered in the 2014 determination of the subject property. *Hoovler testimony; Morris testimony.*

24. Based on this, the Assessor calculated the agricultural portion of the land assessment to be \$13,060. This is \$3 below Hoover's requested agricultural assessment, apparently due to rounding. We agree with the Assessor that this is the appropriate assessment for the agricultural land.
25. Unlike other subtypes of agricultural land, a homesite's true tax value cannot be established on appeal by applying the Guidelines; instead, a party needs to offer probative market-based evidence. The Assessor did not offer any market-based evidence establishing the value of either the homesite or the improvements. Thus, the Assessor failed to make a prima facie case supporting the assessment. We note that the agricultural assessment appears to be identical to our determination from the prior year.
26. As discussed above, Hoovler appears to be requesting the same agricultural assessment as the Assessor, with only a \$3 difference due to rounding. Like the Assessor, Hoovler failed to offer any market based evidence for her requested values for the improvements and the home site. Thus, we find she failed to make a prima facie case for any further reduction in the assessment.
27. Hoovler also requested that the Board calculate the refunds she is owed, order the Assessor to provide those refunds, and order an investigation of the Clinton County Assessor's office. The Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). Hoovler failed to cite to any legal authority for our purported duty to calculate refunds or to ensure the Assessor takes action on refunds. Indiana Code § 6-1.1-26-2.1 explains the requirements for obtaining a refund. Thus, these requests are denied. Similarly, Hoovler failed to show any authority for the Board to investigate the Assessor's office. This request is also denied.
28. Finally, we note that Hoovler made a number of other allegations regarding the conduct of the Assessor, Morris, the PTABOA, and the administrative law judge assigned to her 2014 appeal. None of these allegations are at all relevant to the 2015 assessment of the property and we disregard them.

FINAL DETERMINATION

29. The Assessor failed to meet her burden to support the assessment. Hoovler failed to make a prima facie case for any additional reduction in the assessment. Therefore, the assessment reverts to the previous year's assessment of \$66,900.

ISSUED: October 9, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.